RE PETROTECH LOGISTICS PTE. LTD.

[O.C.J. (Abdul Wahab Ghows J.) January 12, 1982]
[Singapore – Companies Winding-Up No. 72 of 1981]

Company Law – Winding-up petition – Directors acted in affairs of the company in their own interest and in a manner unfair and unjust to other members – Winding-up petition disallowed but petitioner given option to purchase more shares.

The petitioner sought for the winding-up of Petrotech on the grounds that the directors had acted in the affairs of the company in their own interest rather than in the interest of the members as a whole or in any other manner whatsoever which appears to be unfair or unjust to other members. Petrotech applied for an interim injunction which was allowed by the present court. The court also made the order granting the petitioner an option to purchase as many Petrotech shares as he wished at par. Petrotech appealed only against the latter order.

Held: in view of the facts and circumstances of the case, to order the petitioner to sell his shares to Petrotech would be tantamount to giving the court's backing to the high-handed action of the directors of Petrotech in trying to expropriate the petitioner's shares in Petrotech by amending its Memorandum and Articles of Association. The petitioner should therefore be granted the option to purchase as many Petrotech shares as he wished at par provided he exercised such option by September 30, 1981.

COMPANIES WINDING-UP.

K. Y. Choy for the petitioner.

Cheong Yuen Hee (*Cheong Kok Fu* with him) for the company.

Cur. Adv. Vult.

Abdul Wahab Ghows J.: On June 29, 1981 Tony Chua Chwee Thiam (hereinafter called "the Petitioner") filed a petition for the winding-up of Petrotech Logistics Private Ltd (hereinafter called "Petrotech") on the grounds that the directors had acted in the affairs of the company in their own interest rather than in the interest of the members as a whole or in any other manner whatsoever which appears to be unfair or unjust to other members.

Petrotech applied for an interim injunction and on July 7, 1981, I ordered that the Petitioner be restrained from advertising the petition for the winding-up of the company.

On August 28, 1981, the winding-up petition came on for hearing before me and after hearing counsel for the Petitioner and Petrotech, and after considering the facts as set out in the affidavits filed herein, I made the following order:

"Injunction to continue. Winding-up petition struck out. The Company's resolution amending its Memorandum and Articles of Association to enable the expropriation of Petitioner's shares is hereby cancelled. Petitioner is hereby granted an option to purchase as many shares as he wishes in the company at par provided the option is exercised by September 30, 1981."

Petrotech now appeals only against that part of my order granting the Petitioner an option to purchase as many Petrotech shares as he wished at par provided the option was exercised by September 30, 1981.

The facts of this case are briefly as follows: Petrotech was incorporated in Singapore on June 21, 1977 upon the instructions of Rimaco Pte Ltd. (hereinafter called "Rimaco") in which the Petitioner was the majority shareholder. Rimaco's principal business was the procurement of machinery, materials etc. for companies in Indonesia and it was intended that Petrotech would provide it with technical services and advice. In 1978, one Jeffrey Wayne Cloward (hereinafter called "Cloward") who was at that time the technical director in Rimaco and one Theodor Friedrich Gloor (hereinafter called "Gloor") applied for and were allotted 10,000 shares each in Petrotech and thereafter Cloward and Gloor ran Petrotech as its directors.

At a meeting of Petrotech's Board of Directors held in February 1979 at which the Petitioner was present, the question of incorporating a company in Hong Kong by the name of Petrotech Logistics & Development (Hong Kong) Ltd. (hereinafter called "the Hong Kong Company") was discussed and it was agreed that the Petitioner, Cloward and Gloor were to be equal shareholders in the Hong Kong company. At this meeting it was also agreed that the 10,000 shares in Petrotech held by one Miss Lena Ng as the Petitioner's Nominee should be transferred to the Petitioner and the Petitioner was appointed Chairman of the Board of Directors.

At a meeting of the Board held in November 1979, the Petitioner requested the directors to dismiss one Teo Mah Kee who was Petrotech's purchasing manager. Cloward and Gloor opposed the Petitioner, following which the Petitioner gave notice of his intention to resign as Chairman of the Board of Directors and to withdraw as a shareholder of Petrotech.

According to the Petitioner, he was heavily committed financially in Petrotech which was operating at a loss so he wanted to be out of the company, fearing greater financial involvement. On November 27, 1979 he withdrew his personal guarantee for Petrotech's facilities with the Banque Nationale De Paris.

According to the Petitioner, Gloor, after agreeing to purchase Petitioner's 10,000 shares at par, later offered to pay only half value for the said shares. This has not been disputed. Then, after an exchange of correspondence, Gloor on January 25, 1980 wrote to the Petitioner as follows:

"Dear Tony,

Reference to our telephone conversation of today, I have taken notice of your statement and willingness to resign as Chairman and Director of Petrotech Logistics Pte Ltd Singapore immediately upon receipt of a firm date on when your current shareholding in Petrotech will be bought over from you at par value of $10,000.

I wish to confirm that such a transfer will be concluded not later than February 28, 1980.

Above confirmed date of taking over your shares is subject to your immediate submission of resignation as Chairman and Director of Petrotech upon receipt of this letter."

On February 15, 1980 the Petitioner wrote to the Managing Director of Petrotech a letter giving notice of his resignation as Chairman and Director of Petrotech. However, on February 28, 1980 Gloor did not honour his promise to buy the Petitioner's shares and so, according to the Petitioner, he was no longer bound by his agreement to sell his shares at par. Neither Gloor nor anybody else on behalf of Petrotech has given an explanation as to why the promise to take over the Petitioner's shares on February 28, 1980 was not kept. Nothing more was heard from Gloor or Petrotech until April 1980 about their intention to purchase the Petitioner's 10,000 shares. Meantime, according to the Petitioner, he had heard from business circles in Indonesia that Petrotech would be securing a substantial contract in Bintulu, Sarawak, so on or about April 11, 1980 when the directors of Petrotech wrote to the Petitioner's solicitors regarding the sale of the said shares, the Petitioner instructed his solicitors to reply that he did not propose to sell his shares. According to the Petitioner, he sensed that the directors of Petrotech would take up his shares only if Petrotech's business improved but not otherwise, and so when in April 1980 they wanted to purchase his shares he felt that they were hiding from him some prospective profits the company would be making. Acting on this suspicion he refused to sell his shares. Then the Petitioner discovered that the Hong Kong company had been incorporated in March 1979 and Gloor and Cloward had allotted to themselves 39,998 shares of HK$1 each which amounted to 100% of the issued share capital out of the authorised capital of HK$100,000. This was not in accordance with the earlier agreement that the Petitioner, Gloor and Cloward would hold equal shares in the Hong Kong company.

In October 1980, the directors of Petrotech decided to increase Petrotech's share capital. By this time Cloward, Gloor and two other shareholders had transferred all their shares in Petrotech to the Hong Kong company. An Extraordinary General Meeting was held on October 30, 1980 to increase Petrotech's share capital. At this meeting the Petitioner through his proxy asked for the financial statement of the Hong Kong company and for additional financial information relating to Petrotech. Then at the Extraordinary General Meeting held on January 28, 1981 the resolution to increase Petrotech's share capital from 100,000 to one million $1 shares was carried. According to the Petitioner he had not been provided with adequate and crucial information of Petrotech's affairs despite his requests for the same so he was not in a position to apply for shares when Petrotech's share capital was increased. This resulted in the issue and allotment of 360,000 Petrotech share to the Hong Kong company which later acquired a further 90,000 shares which, according to the Petitioner, would otherwise have been allotted to him. Thus on March 17, 1981 Petrotech had only two shareholders, namely the Hong Kong company holding 490,000 shares and the Petitioner holding 10,000 shares.

On June 5, 1981, the directors of Petrotech passed a resolution as follows:

"To request an explanation from the Petitioner for his past and present conduct found detrimental to the company and if necessary to amend the Memorandum and Articles of Association."

According to Gloor, the Petitioner wanted the financial information he had asked for in order to use it to the detriment of Petrotech and to the profit of Rimaco, of which the Petitioner was managing director and majority shareholder. This was denied by the Petitioner who said that before he could decide whether or not to invest further in Petrotech he had to have more information.

The Petitioner made no move to comply with the request of the directors for an explanation of his conduct, so on June 11, 1981 the directors of Petrotech issued a notice calling for an Extraordinary General Meeting to be held on July 3, 1981 to amend its Memorandum and Articles of Association so that the company may be empowered to expropriate the shares held by a member who had acted detrimentally to the company or was

competing with it either individually or in partnership or as an officer in a rival company. The Petitioner then filed this petition for the winding-up of Petrotech. The resolution to amend the Memorandum and Articles of Association of Petrotech to enable a member's shares to be expropriated as aforesaid was carried at the Extraordinary General Meeting held on July 3, 1981.

On August 28, 1981, the winding-up petition came on for hearing before me. Counsel for Petrotech, Mr. Cheong Yuen Hee, argued that a shareholder petitioner must prove in his petition that the company had assets of such an amount that in the event of a winding-up he would have a tangible share of the surplus to receive. In this case Petrotech was insolvent and therefore the Petitioner had no *locus standi*. Mr. Cheong made no attempt to substantiate Gloor's allegations that the Petitioner wanted more information about Petrotech and the Hong Kong company in order to wreck Petrotech and to profit Rimaco. Mr. Cheong did not explain how the information the Petitioner wanted could have been of benefit to Rimaco. I found that there was no substance to such allegations and that the Petitioner's explanation of his reason for wanting more information was reasonable. Mr. Cheong also did not clarify in what way Petrotech would suffer if the Petitioner remained as a minority shareholder thereof.

In view of the facts and circumstances of the case set out above, to order the Petitioner to sell his shares to Petrotech would be tantamount to giving the court's backing to the high-handed action of Gloor and Cloward in trying to expropriate the Petitioner's shares in Petrotech by amending its Memorandum and Articles of Association. To restore the *status quo*, I ordered that the Petitioner be granted the option to purchase as many Petrotech shares as he wished at par provided he exercised such option by September 30, 1981.

Order accordingly.

Solicitors: *K. Y. Choy & Co.; Chan, Goh & Co.*

PUBLIC PROSECUTOR v. FRANCIS T. SEOW

[A.C.J. (Wee Chong Jin C.J.) May 26, 1982]
[Singapore – Magistrate's Appeal No. 169 or 1981]

Legal Profession – Practising Certificate – Solicitor "solemnly and sincerely" declared that he was not disqualified from applying – Solicitor actually disqualified as judgment debt exceeding $100,000 against him – Legal Profession Act (Cap. 217), s. 30 (1) (d), (e), & (f).

Legal Profession – Solicitor disqualified under section 30(1) (f) from applying practising certificate – Burden of proof on prosecution.

On March 29, 1980, respondent, a solicitor applied for a practising certificate for the year ending March 31, 1981 and he "solemnly and sincerely" declared that he was not disqualified by section 30(1) (f) from applying for the said practising certificate. In fact, he was disqualified as there was then outstanding against him a judgment debt exceeding $100,000. Pursuant to the above application the Assistant Registrar of the Supreme Court issued him a practising certificate.

On September 1, 1981, the respondent appeared before a District Court on a charge of giving false information and inducing the Assistant Registrar to do something which he ought not to have done if the true state of facts regarding such information were known to him. The trial judge acquitted the respondent because "there was a reasonable doubt in (his) mind as to whether or not (the respondent) was in fact aware of the amendments to the Legal Profession Act when he made the statutory declaration".

Held, allowing the appeal: (1) the trial judge applied the wrong test in the context of this case unless in using the expression "reasonable doubt in mind" the trial judge meant to say that after considering all the evidence he could not feel sure that the respondent knew of the disqualifying provisions of section 30(1)(f). The proper approach should have been "Do I accept the respondent's explanation and, if not, do I feel sure that he was aware of the statutory disqualifying provision?"

(2) having regard to all the facts and the surrounding circumstances, the respondent's explanations relating to a matter governing his continued right to practise his profession defies credulity and no reasonable tribunal could have any doubt that the respondent was aware of the statutory disqualifying provision when he made the statutory declaration. Accordingly, the order of acquittal must be set aside and a sentence of $1,000, the maximum fine would be imposed.

MAGISTRATE'S APPEAL.

Sowaran Singh (Deputy Public Prosecutor) for the appellant.

H.E. Cashin (*Choo Han Teck* with him) for the respondent.

Cur. Adv. Vult

Wee Chong Jin C.J.: On March 30, 1979 Parliament passed the Legal Profession (Amendment)